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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,083	10/14/2003	Christoph Haas	2002P17240US (1867-0038)	4365
7590 07/28/2005			EXAMINER	
Harold C. Moore Maginot, Moore & Beck Bank One Center/Tower 111 Monument Circle, Suite 3000 Indianapolis, IN 46204-5115			BENSON, WALTER	
			ART UNIT	PAPER NUMBER
			2858	

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/685,083

Applicant(s)

HAAS ET AL.

Examiner

Walter Benson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,9 and 11-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,9 and 11-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-4, 9, 12-14, and 15-18 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4-7, 10, 13-15, and 19-20 of copending Application No. 10/685,077. Although the conflicting claims are not

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identical, they are not patentably distinct from each other because except for employing different phraseology, an obvious variation of the recited subject matter is being sought. For example:

- a. The limitations recited in current application 1, corresponds to the limitations of claims 1 and 4 of application number 10/685,077. However, because claims 1 and 4 of application number 10/685,077 cover the scope of the present invention and more, it would have rendered claim 1 obvious.
- b. The limitations recited in current application 2, corresponds to the limitations of claim 5 of application number 10/685,077.
- c. The limitations recited in current application 3, corresponds to the limitations of claim 6 of application number 10/685,077.
- d. The limitations recited in current application 4, corresponds to the limitations of claim 7 of application number 10/685,077.
- e. The limitations recited in current application 9, corresponds to the limitations of claim 10 of application number 10/685,077.
- f. The limitations recited in current application 11, corresponds to the limitations of claim 14 of application number 10/685,077.
- g. The limitations recited in current application 12, corresponds to the limitations of claim 13 of application number 10/685,077.
- h. The limitations recited in current application 13, corresponds to the limitations of claim 1, element A, of application number 10/685,077.
- i. The limitations recited in current application 14, corresponds to the limitations of claim 10, of application number 10/685,077.

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- j. The limitations recited in current application 15, corresponds to the limitations of claims 15 and 19 of application number 10/685,077.
- k. The limitations recited in current application 16, corresponds to the limitations of claim 20 of application number 10/685,077.
- l. The limitations recited in current application 17, corresponds to the limitations of claim 6 of application number 10/685,077.
- m. The limitations recited in current application 18, corresponds to the limitations of claim 7 of application number 10/685,077.

Therefore, it would have been obvious to one of ordinary skill in the art to readily recognize that though the conflicting claims employ different phraseology, subject matter found in claims 1-4, 9, 12-14, and 15-18 of the current application are found in claims 1, 4-7, 10, 13-15, and 19-20 of copending application number 10/685,077.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

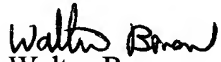
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter Benson whose telephone number is (571) 272-2227. The examiner can normally be reached on Mon to Fri 6:30 AM to 4:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on (571) 272-2180. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Walter Benson
Patent Examiner

July 25, 2005